

must be entered into the SEVIS database.

[52 FR 42597, Nov. 5, 1987, as amended at 67 FR 58695, Sept. 18, 2002; 68 FR 28131, May 23, 2003]

§ 41.62 Exchange visitors.

(a) *J–1 classification.* An alien is classifiable as an exchange visitor if qualified under the provisions of INA 101(a) (15) (J) and the consular officer is satisfied that the alien:

(1) Has been accepted to participate, and intends to participate, in an exchange visitor program designated by the Bureau of Education and Cultural Affairs, Department of State, as evidenced by the presentation of a properly executed Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status;

(2) Has sufficient funds to cover expenses or has made other arrangements to provide for expenses;

(3) Has sufficient knowledge of the English language to undertake the program for which selected, or, except for an alien coming to participate in a graduate medical education or training program, the sponsoring organization is aware of the language deficiency and has nevertheless indicated willingness to accept the alien; and

(4) Meets the requirements of INA 212(j) if coming to participate in a graduate medical education or training program.

(5) *Electronic verification and notification.* An exchange visitor's acceptance documentation and payment of any applicable fees must be verified by a consular official's review of the SEVIS database or via direct access to SEVIS or ISEAS prior to the issuance of a J–1 or J–2 visa. Evidence of the payment of any applicable fees, if not presented with other documentation, may also be verified through the Consolidated Consular Database or direct access to SEVIS. Upon issuance of a J–1 or J–2 visa, notification of such issuance must be entered into the SEVIS database.

(b) *J–2 Classification.* The spouse or minor child of an alien classified J–1 is classifiable J–2.

(c) *Applicability of INA 212(e).* (1) An alien is subject to the 2-year foreign residence requirement of INA 212(e) if:

(i) The alien's participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's last legal permanent residence; or

(ii) At the time of the issuance of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of admission as an exchange visitor, or at the time of acquisition of such status after admission, the alien is a national and resident or, if not a national, a legal permanent resident (or has status equivalent thereto) of a country which the Secretary of State has designated, through publication by public notice in the FEDERAL REGISTER, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage during the exchange visitor program; or

(iii) The alien acquires exchange visitor status in order to receive graduate medical education or training in the United States.

(2) For the purposes of this paragraph the terms *financed directly* and *financed indirectly* are defined as set forth in section § 514.1 of chapter V.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of INA 212(e) in the case of an alien determined to be subject to such requirements is the country of which the alien is a national and resident, or, if not a national, a legal permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2-year foreign residence requirement of INA 212(e), the spouse or child of that alien, accompanying or following to join the alien, is also subject to that requirement if admitted to the United States pursuant to INA 101(a) (15) (J) or if status is acquired pursuant to that section after admission.

(d) *Notification to alien concerning 2-year foreign residence requirement.* Before the consular officer issues an exchange visitor visa, the consular officer must inform the alien whether the alien will be subject to the 2-year residence and physical presence requirement of INA 212(e) if admitted to the United States under INA 101(a) (15) (J)

Department of State

§41.63

and, if so, the country in which 2 years' residence and physical presence will satisfy the requirement.

[52 FR 42597, Nov. 5, 1987, as amended at 67 FR 58695, Sept. 18, 2002; 68 FR 28132, May 23, 2003; 72 FR 10061, Mar. 7, 2007]

§41.63 Two-year home-country physical presence requirement.

(a) *Statutory basis for rule.* Section 212(e) of the Immigration and Nationality Act, as amended, provides in substance as follows:

(1) No person admitted under Section 101(a) (15)(J) or acquiring such status after admission:

(i) Whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the government of the country of his nationality or of his last legal permanent residence;

(ii) Who at the time of admission or acquisition of status under 101(a)(15)(J) was a national or legal permanent resident of a country which the Secretary of State, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged [See the most recent "Revised Exchange Visitor Skills List", at http://exchanges.state.gov/education/jexchanges/participation/skills_list.pdf]; or

(iii) Who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last legal permanent residence for an aggregate of at least two years following departure from the United States.

(2) Upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency (or in the case of an alien who is a graduate of a foreign medical school pursuing a program in graduate medical

education or training, pursuant to the request of a State Department of Public Health, or its equivalent), or of the Secretary of Homeland Security after the latter has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a legal permanent resident alien), or that the alien cannot return to the country of his nationality or last legal permanent residence because he would be subject to persecution on account of race, religion, or political opinion, the Secretary of Homeland Security may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Secretary of Homeland Security to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, the waiver shall be subject to the requirements of section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184).

(3) Except in the case of an alien who is a graduate of a foreign medical school pursuing a program in graduate medical education or training, the Secretary of Homeland Security, upon the favorable recommendation of the Secretary of State, may also waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last legal permanent residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien. Notwithstanding the foregoing, an alien who is a graduate of a foreign medical school pursuing a program in graduate medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section.

(b) *Request for waiver on the basis of exceptional hardship or probable persecution on account of race, religion, or political opinion.* (1) An exchange visitor who seeks a waiver of the two-year home-country residence and physical presence requirement on the grounds